

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LORENZO CASTENEDA,
Plaintiff,
v.
J. QUIRING, et al.,
Defendants.

No. 2:21-cv-2196 DAD KJN P

ORDER

Plaintiff is a state prisoner, proceeding pro se with an action brought under 42 U.S.C. § 1983. Plaintiff's motion to compel production of documents, fully briefed, is now before the court. As set forth below, plaintiff's motion to compel is partially granted.

I. Plaintiff's Second Amended Complaint

Plaintiff, under the EOP¹ level of mental health care, alleges that on two separate occasions, defendants J. Quiring, K. McTaggart, J. Rowe and S. Medina conspired to violate plaintiff's Eighth and First Amendment rights by handcuffing his hands extremely tightly behind his back and placing him in a small stand up cage with no seat and without water or restroom

¹ The Mental Health Services Delivery System Program Guide for the California Department of Corrections and Rehabilitation provides four levels of mental health care services: Correctional Clinical Case Management System ("CCCMS"); Enhanced Outpatient ("EOP"); Mental Health Crisis Bed ("MHCB") and inpatient hospital care. Coleman v. Brown, 2013 WL 6491529, at *1 (E.D. Cal. Dec. 10, 2013).

1 breaks for four hours and eight hours, respectively, while mocking plaintiff and telling him to file
2 an appeal like plaintiff “always” does. (ECF No. 36.) Plaintiff also alleges that defendants K.E.
3 Chamberlin and M.K. Arteaga, both LVNs, refused to render plaintiff medical care and conspired
4 with the other defendants in violation of the Eighth Amendment. (ECF No. 36 at 6-7.)

5 **II. Motion to Compel Discovery**

6 **A. Applicable Legal Standards Governing Discovery Disputes**

7 Under Rule 37 of the Federal Rules of Civil Procedure, “a party seeking discovery may
8 move for an order compelling an answer, designation, production, or inspection.” Fed. R. Civ. P.
9 37(a)(3)(B). Such “motion may be made if: (i) a deponent fails to answer a question asked under
10 Rule 30 or 31; (ii) a corporation or other entity fails to make a designation under Rule 30(b)(6) or
11 31(a)(4); (iii) a party fails to answer an interrogatory submitted under Rule 33; or (iv) a party fails
12 to produce documents or fails to respond that inspection will be permitted -- or fails to permit
13 inspection -- as requested under Rule 34.” Fed. R. Civ. P. 37(a)(3)(B). An “evasive or
14 incomplete disclosure, answer, or response must be treated as a failure to disclose, answer, or
15 respond.” Fed. R. Civ. P. 37(a)(4). “District courts have ‘broad discretion to manage discovery
16 and to control the course of litigation under Federal Rule of Civil Procedure 16.’” Hunt v. Cnty.
17 of Orange, 672 F.3d 606, 616 (9th Cir. 2012) (quoting Avila v. Willits Envtl. Remediation Trust,
18 633 F.3d 828, 833 (9th Cir. 2011)).

19 Plaintiff bears the burden of informing the court (1) which discovery requests are the
20 subject of his motion to compel, (2) which of the responses are disputed, (3) why he believes the
21 response is deficient, (4) why defendants’ objections are not justified, and (5) why the
22 information he seeks through discovery is relevant to the prosecution of this action. McCoy v.
23 Ramirez, 2016 WL 3196738 at *1 (E.D. Cal. 2016); Ellis v. Cambra, 2008 WL 860523, at *4
24 (E.D. Cal. 2008) (“Plaintiff must inform the court which discovery requests are the subject of his
25 motion to compel, and, for each disputed response, inform the court why the information sought
26 is relevant and why defendant’s objections are not justified.”). However, the undersigned is
27 vested with broad discretion to manage discovery; despite the discovery procedures discussed
28 herein, plaintiff is entitled to leniency as a pro se litigant. Thus, to the extent possible, the

1 undersigned attempts to resolve plaintiff's motion to compel on the merits. Hunt, 672 F.3d at
2 616; Hallett v. Morgan, 296 F.3d 732, 751 (9th Cir. 2002).

3 The reach of Rule 34 of the Federal Rules of Civil Procedure, which governs requests for
4 production, "extends to all relevant documents, tangible things and entry upon designated land or
5 other property." Clark v. Vega Wholesale Inc., 181 F.R.D. 470, 472-73 (D. Nev. 1998), citing 8A
6 C. Wright & A. Miller, Federal Practice and Procedure § 2206, at 381. "For each item or
7 category, the response must either state that inspection and related activities will be permitted as
8 requested or state with specificity the grounds for objecting to the request, including the reasons."
9 Fed. R. Civ. P. 34(b)(2)(B). The responding party is responsible for all items in "the responding
10 party's possession, custody, or control." Fed. R. Civ. P. 34(a)(1). Actual possession, custody or
11 control is not required. Rather, "[a] party may be ordered to produce a document in the
12 possession of a non-party entity if that party has a legal right to obtain the document or has
13 control over the entity who is in possession of the document." Soto v. City of Concord, 162
14 F.R.D. 603, 619 (N.D. Cal. 1995). "The party seeking production of the documents bears the
15 burden of proving that the documents are in the other party's possession, custody, or control."
16 Philippe Charriol Int'l Ltd. v. A'lor Int'l Ltd., 2016 WL 7634440, at *2 (S.D. Cal. Mar. 10, 2016)
17 (citing United States v. Int'l Union of Petroleum & Indus. Workers, AFL-CIO, 870 F.2d 1450,
18 1452 (9th Cir. 1989)).

19 The purpose of discovery is to "remove surprise from trial preparation so the parties can
20 obtain evidence necessary to evaluate and resolve their dispute." U.S. ex rel. O'Connell v.
21 Chapman University, 245 F.R.D. 646, 648 (C.D. Cal. 2007) (quotation and citation omitted).
22 Rule 26(b)(1) of the Federal Rules of Civil Procedure offers guidance on the scope of discovery
23 permitted:

24 Parties may obtain discovery regarding any nonprivileged matter that
25 is relevant to any party's claim or defense and proportional to the
26 needs of the case, considering the importance of the issues at stake
27 in the action, the amount in controversy, the parties' relative access
28 to relevant information, the parties' resources, the importance of the
discovery in resolving the issues, and whether the burden or expense
of the proposed discovery outweighs its likely benefit. Information
within this scope of discovery need not be admissible in evidence to
be discoverable.

1 Id. “Relevance for purposes of discovery is defined very broadly.” Garneau v. City of Seattle,
2 147 F.3d 802, 812 (9th Cir. 1998). “The party seeking to compel discovery has the burden of
3 establishing that its request satisfies the relevancy requirements of Rule 26(b)(1). Thereafter, the
4 party opposing discovery has the burden of showing that the discovery should be prohibited, and
5 the burden of clarifying, explaining or supporting its objections.” Bryant v. Ochoa, 2009 WL
6 1390794 at *1 (S.D. Cal. May 14, 2009) (internal citation omitted).

7 Official Information Privilege

8 Federal common law recognizes a qualified privilege for official information. See Kerr v.
9 U.S. Dist. Court for the N. Dist. of Cal., 511 F.2d 192, 197-98 (9th Cir. 1975), aff’d 426 U.S. 394
10 (1976). To determine whether the official information privilege applies, the court must balance
11 the interests of the party seeking discovery and the interests of the government entity asserting the
12 privilege. Soto, 162 F.R.D. at 613. In the context of a civil rights action, “this balancing
13 approach is moderately ‘pre-weight[ed] in favor of disclosure.’” Bryant v. Armstrong, 285
14 F.R.D. 596, 605 (S.D. Cal. June 14, 2012) (quoting Kelly v. City of San Jose, 114 F.R.D. 653,
15 661 (N.D. Cal. 1987)).

16 This court’s duty to balance the parties’ interests in disclosure are triggered when the
17 party opposing disclosure makes a “substantial threshold showing.” Soto, 162 F.R.D. at 613
18 (quoting Kelly, 114 F.R.D. at 669). The party opposing disclosure “must submit a declaration or
19 affidavit from a responsible official with personal knowledge of the matters to be attested to in
20 the affidavit.” Soto, 162 F.R.D. at 613; see also Stevenson v. Blake, 2012 WL 3282892, at *2
21 (S.D. Cal. Aug. 10, 2012). The declaration must include: “(1) an affirmation that the agency has
22 maintained the confidentiality of the documents at issue; (2) a statement that the official has
23 personally reviewed the documents; (3) a specific identification of the governmental or privacy
24 interests that would be compromised by production; (4) a description of how disclosure subject to
25 a carefully crafted protective order would create a substantial risk of harm to these interests; and
26 (5) a projection of how much harm would be done to these interests if disclosure were made.”
27 Soto, 162 F.R.D. at 613 (citing Kelly, 114 F.R.D. at 670). “A strong affidavit would also
28 describe how the plaintiff could acquire information of equivalent value from other sources

1 without undue economic burden.” Soto, 162 F.R.D. at 613.

2 If the objecting party does not meet the requirements for invoking the privilege, a court
3 will typically overrule the privilege objection and order full disclosure. Bryant v. Armstrong, 285
4 F.R.D. at 605. “[I]f the party meets this burden, courts generally conduct an in camera review of
5 the material and balance each party’s interests.” Davis v. Schneider, 2020 WL 9074713 at *7
6 (C.D. Cal. Dec. 18, 2020) (citing Soto, 162 F.R.D. at 613; Kelly, 114 F.R.D. at 671).

7 Local Rule 251

8 As set forth in the court’s scheduling order, “unless otherwise ordered, Local Rule 251
9 shall not apply.” (ECF No. 26 at 5.)

10 B. Failure to Meet and Confer

11 Defendants demonstrated their efforts to meet and confer, but plaintiff contends
12 defendants delayed their efforts and failed to provide him with sufficient notice for the phone
13 calls. Plaintiff raises valid points as to his being at the mercy of prison staff in terms of retrieving
14 his legal materials. But even if plaintiff failed to properly follow the meet and confer process
15 under Rule 37(a), defendants’ objections are overruled.² The court relieved the parties of the
16 meet and confer requirement under Local Rule 251 because plaintiff is incarcerated, making it
17 difficult for the parties to engage in face to face conferences.

18 The court now turns to the merits of plaintiff’s motion.

19 C. Discovery Requests at Issue

20 Defendants J. Rowe and S. Medina RPD No. 3

21 Produce complains [sic] of misconduct contained in defendants
22 personnel file made against defendant[s] that are sufficiently similar
23 to the claims brought in plaintiff[’s] law suit including notices of
24 progressive discipline, adverse personnel action, counseling,
25 reprimand, and remedial training, related to inmates complaints -
against defendant alleging unreasonable use of restrain[t]s, excessive
force, leaving inmates in a cage cuff up behind the back with no
water, no food, no restroom, fabrication of CDCR - 7219 form Injury

26 ² Federal Rule of Civil Procedure 37(a) contains a requirement that the movant attempt to resolve
27 any disputes prior to seeking court intervention. However, while compliance with that rule has
28 not been explicitly excused and the court encourages parties to attempt to resolve disputes prior to
seeking court intervention, because plaintiff is incarcerated and proceeding pro se, it is not
enforced here and does not provide grounds for denying the motion.

1 Report, Fabrication of Documents. . . .
2 (ECF No. 45 at 26-27, 32.)

3 Response

4 Defendants object to this request as compound. Defendants further
5 object to this request as vague and ambiguous, specifically with
6 respect to the terms “complains,” “progressive discipline,” “adverse
7 personal action,” “counseling,” “reprimand,” “remedial training,”
8 “case,” “cuff up,” and “fabrication of CDCR 7219 form Injury
9 Report.” Defendants further object to this request because it seeks
10 information that is not proportional to the needs of this case,
11 considering the importance of the issues at stake in the action, the
12 amount in controversy, the parties’ resources, the importance of the
13 discovery in resolving the issues, and whether the burden or expense
14 of the proposed discovery outweighs its likely benefit. Defendants
15 further object to this request on the grounds that it seeks information
16 that is protected from disclosure by the official information privilege,
17 the disclosure of which would create a hazard to the safety and
18 security of the institution, prison officials, and inmates, and violate
19 privacy rights afforded to prison officials and inmates, because it
20 seeks grievances or complaints submitted by inmates who have not
21 consented to the release of their grievances, and that are protected by
22 state and federal privacy laws, including the official-information
23 privilege, California Code of Regulations, title 15, section 3370, and
24 California Penal Code sections 832.7 and 832.8. Defendants further
25 object to this request on the ground that it seeks confidential peace
26 officer personnel information protected by the official information
27 privilege, California Government Code section 6254, and California
Evidence Code sections 1040, 1041, and 1043.

17 Subject to and without waiving these objections, Defendants respond
18 to this request as follows: No confidential documents will be
19 produced. A privilege log has been provided and attached hereto.

20 (ECF No. 45 at 27, 32.)

21 In his motion, plaintiff provided no specific reasons why a further response to these two
22 particular requests is required. Rather, at the beginning of his motion, he generally contends that
23 defendants’ objections do not meet the requirements for invoking the privilege, and the court
24 should order defendants to produce the requested material from defendants’ personnel files or
25 review such documents in camera. (ECF No. 30 at 1) (citing Bryant v. Armstrong, 285 F.R.D. at
26 605). Plaintiff contends that in excessive force cases such as this, officers’ disciplinary records
27 and misconduct complaints are relevant to show the officer’s credibility, motive and pattern of
behavior.

28 In opposition,

[d]efendants repeat their objections to this request; specifically, defendants' object that this request is vague and ambiguous, specifically with respect to the terms "similar acts," "claimed in plaintiff law suit." Defendants are unaware of what Plaintiff is requesting with the phrase similar acts, even with plaintiff's examples.

(ECF No. 41 at 9.)

The privilege log identifies one notice of adverse action as to defendant Medina. (ECF No. 50 at 6.) However, the adverse action was based on Medina filing a tardy report concerning Medina witnessing two inmates fighting. Plaintiff fails to explain how such document is relevant to plaintiff's claims. No further response is required.

Defendant J. Quiring RPD No. 1³

Plaintiff did not write out the specific discovery request, but defendants respond as if plaintiff seeks an order compelling a further response to the following request:

Produce complain[t]s of misconduct contained in defendants personal file made against defendant J. Quiring that are sufficiently similar to the claims brought in plaintiff law suit including notices of progressive discipline, adverse personal action, counseling, reprimand, and remedial training, related to inmates complaints - against defendant alleging unreasonable use of restraints, excessive force, leaving inmates in a cage cuff up behind the back, with no water, food, or restroom, fabrication of CDCR-7219-form injury report, fabrication of documents... Certain documents contained in defendants personnel files are relevant to plaintiff claims in this action, because they may reveal the defendants - credibility, motive, and patterns of behavior- (see Harris v. German, 2019 WL 4640503 at 8 (E.D. Cal. Sept. 24, 2019)).

(ECF No. 45 at 14.)

Response

Defendants object to this request as compound. Defendants further object to this request as vague and ambiguous, specifically with respect to the terms "complains," "progressive discipline," "adverse personal action," "counseling," "reprimand," "remedial training," "case," "cuff up," "fabrication of CDCR 7219 form Injury Report," and "fabrication of documents." Defendants further object to this request because it seeks information that is not proportional to the needs of this case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' resources, the

³ Plaintiff's motion combines J. Quiring's RPD Request No.1 and Request No. 2. For clarity and the convenience of the court, defendants separated them in this statement.

1 importance of the discovery in resolving the issues, and whether the
2 burden or expense of the proposed discovery outweighs its likely
3 benefit. Defendants further object to this request on the grounds that
4 it seeks information that is protected from disclosure by the official-
5 information privilege, the disclosure of which would create a hazard
6 to the safety and security of the institution, prison officials, and
7 inmates, and violate privacy rights afforded to prison officials and
8 inmates, because it seeks grievances or complaints submitted by
9 inmates who have not consented to the release of their grievances,
10 and that are protected by state and federal privacy laws, including the
11 official-information privilege, California Code of Regulations, title
12 15, section 3370, and California Penal Code sections 832.7 and
13 832.8. Defendants further object to this request on the ground that it
14 seeks confidential peace officer personnel information protected by
15 the official information privilege, California Government Code
16 section 6254, and California Evidence Code sections 1040, 1041, and
17 1043. Subject to and without waiving these objections, Defendants
18 respond to this request as follows: After a diligent search and
19 reasonable inquiry, Defendant has not discovered any documents in
20 its position that are responsive to this request for complaints of
21 misconduct against Defendant Quiring for “similar acts” claimed in
22 Plaintiff’s lawsuit.

23 (ECF No. 45 at 14-15.)

24 Plaintiff did not specifically address why the response was insufficient or demonstrate that
25 a further response is necessary, other than his generalized objections set forth at the beginning of
26 his motion.

27 In opposition,

28 Defendants repeat the objections stated in their response. Defendants
29 again repeat that after a diligent search and reasonable inquiry,
30 Defendants have not discovered any documents in its possession that
31 would be responsive to the request. Accordingly, the Court should
32 deny this request.

33 (ECF No. 41 at 12.)

34 Despite defendants’ objections, defendants conducted a diligent search and reasonable
35 inquiry yet found no documents responsive to this request. Therefore, no further response is
36 required.

37 Defendant J. Quiring RPD No. 2⁴

38 Plaintiff did not write out the specific discovery request, but defendants respond as if

39 ⁴ Plaintiff’s motion combined J. Quiring’s RPD Request Nos.1 and 2, but for clarity, they are
40 separated herein.

1 plaintiff seeks an order compelling a further response to the following request:

2 Produce all inmates' grievances kept within the inmate appeals
3 tracking system (IATS) and third level appeals at Sacramento against
4 the defendant by inmates for similar acts claimed in plaintiff law suit,
5 specifically unreasonable use of restraints, excessive force,
6 fabrication of 7219 form injury report, leaving inmates in a cage cuff
7 up behind the back, with no water, no food, or restroom, fabrication
8 of documents. The request is reasonably calculated to lead to the
9 discovery of admissible evidence because several complaints,
grievances have been filed against defendants alleging similar
misconduct against inmates, such grievances may also disclose -
witnesses who would testify as to defendant misconduct. (see, Garcia
v. Cluck, 2013 WL 6441474, at - 2, (S.D. Cal Dec. 9, 2013, finding
complaints by other inmates about conduct similar to the plaintiff are
relevant and directing production of such documents.

10 (ECF No. 45 at 15.)

11 Response

12 Defendants object to this request as compound. Defendants further
13 object to this request as vague and ambiguous, specifically with
14 respect to the terms "similar acts," "claimed in plaintiff lawsuit"
15 "cage cuff up," and "fabrication of documents." Defendants further
16 object to this request because it seeks information that is not
17 proportional to the needs of this case, considering the importance of
18 the issues at stake in the action, the amount in controversy, the
19 parties' resources, the importance of the discovery in resolving the
20 issues, and whether the burden or expense of the proposed discovery
21 outweighs its likely benefit. Defendants further object to this request
22 on the grounds that it seeks information that is protected from
23 disclosure by the official information privilege, the disclosure of
24 which would create a hazard to the safety and security of the
25 institution, prison officials, and inmates, and violate privacy rights
26 afforded to prison officials and inmates, because it seeks grievances
or complaints submitted by inmates who have not consented to the
release of their grievances, and that are protected by state and federal
privacy laws, including the official-information privilege, California
Code of Regulations, title 15, section 3370, and California Penal
Code sections 832.7 and 832.8. Defendants further object to this
request on the ground that it seeks confidential peace officer
personnel information protected by the official information privilege,
California Government Code section 6254, and California Evidence
Code sections 1040, 1041, and 1043. Subject to and without waiving
these objections, Defendants respond to this request as follows:
After a diligent search and reasonable inquiry, Defendant has not
discovered any documents in its position that are responsive to this
request for inmate grievances kept within IATS against Defendant
Quiring for "similar acts" claimed in plaintiff lawsuit.

27 (ECF No. 45 at 15-16.)

28 Plaintiff did not specifically address why the response was insufficient or demonstrate that

1 a further response is necessary, other than his generalized objections noted above.

2 In opposition,

3 Defendants repeat the objections stated in their response. Defendants
4 again repeat that after a diligent search and reasonable inquiry,
5 Defendants have not discovered any documents in its possession that
would be responsive to the request. Accordingly, the Court should
deny this request.

6 (ECF No. 41 at 14.)

7 Defendants discovered no documents responsive to this request. Therefore, no further
8 response is required.

9 Rowe and Medina RPD No. 1

10 Produce the video from Facility-A surveillance system for the date
11 of April 01, 2021, this video recorded defendant J. Rowe escorting
plaintiff cuff up behind his back.

12 (ECF No. 30 at 10; 45 at 26, 31.)

13 Response

14 Defendants object to this request as vague and ambiguous,
15 specifically with respect to the term “Facility-A surveillance
16 system.” It is overly broad in scope and time. The request is
argumentative and lacks foundation because it assumes Defendant
Rowe was videotaped while escorting plaintiff on April 1, 2021.

17 Subject to and without waiving these objections, defendants respond
18 to this request as follows: After a diligent search and reasonable
inquiry, defendant has not discovered any video recording in its
possession that is responsive to this request.

19 (ECF No. 45 at 26 (Rowe).)

20 Defendants object to this request as vague and ambiguous,
21 specifically with respect to the term “Facility-A surveillance
22 system.” The request is overbroad in scope. It is argumentative and
lacks foundation because the request assumes video footage of
defendant Medina escorting plaintiff on April 2, 2021 exists.

23 Subject to and without waiving these objections, defendants respond
24 to this request as follows: After a diligent search and reasonable
inquiry, defendant has not discovered any video recordings in its
possession that is responsive to this request.

25 (ECF No. 45 at 31 (Medina).)

26 Plaintiff argues that defendants have a “significant history” of falsely claiming video
27 footage does not exist. Plaintiff alleges that defendants do in fact have video footage and are
28

1 lying by claiming otherwise. Plaintiff asks the court to review the requested video footage to
2 confirm whether or not it exists.

3 In opposition,

4 Defendants repeat the objections stated in their attached response.
5 Regardless, defendants again state that after a diligent search and
6 reasonable inquiry, defendants have not discovered any video
7 evidence in its possession that would be responsive to the request.
Defendants cannot produce, either to plaintiff or the court for review,
that which does not exist.

8 (ECF No. 41 at 20.)

9 In reply, plaintiff argues that in response to plaintiff's request for admission no. 7,
10 defendant Quiring admitted that "some areas of MCSP A Facility yard have video surveillance."
11 (ECF No. 45 at 8.) In addition, plaintiff cites incidents where video taken in front of Building 5
12 Facility A at MCSP was used as evidence to convict other inmates. (ECF No. 45 at 9-10, 66-
13 101.) Plaintiff contends that when video is sought to support inmates' claims of staff misconduct,
14 defendants deny such video exists, and cites Rodriguez v. Knight, No. 2:19-cv-2322 DB (E.D.
15 Cal.), where the inmate's request for video was denied because no video was discovered. (ECF
16 No. 45 at 10-11.) Plaintiff contends these examples demonstrate that defendants cannot be
17 trusted to provide true responses, and the court should order defendants to provide the video
18 footage for the court to review in camera. (Id.)

19 "Under ordinary circumstances, a party's good faith averment that the items sought simply
20 do not exist, or are not in his possession, custody, or control, should resolve the issue of failure of
21 production since one 'cannot be required to produce the impossible.'" Berger v. Home Depot
22 USA, Inc., 2010 WL 11558000, at *7 (C.D. Cal. Oct. 7, 2010) (quoting Zervos v. S. S. Sam
23 Houston, 79 F.R.D. 593, 595 (S.D. N.Y. 1978), and LaChemise Lacoste v. Alligator Co., 60
24 F.R.D. 164, 172 (D. Del. 1973)). The "court cannot compel a party to produce documents that do
25 not exist and a mere suspicion that additional documents exist is an insufficient basis to grant a
26 motion to compel. K.C.R. v. Cty. of Los Angeles, 2014 WL 12725470, at *8 (C.D. Cal. Aug. 6,
27 2014). To succeed on the motion, "the moving party must have a colorable basis for its belief
28 that relevant, responsive documents exist and are being improperly withheld." K.C.R., 2014 WL

1 12725470, at *8.

2 Here, plaintiff speculates that defendants are lying based on plaintiff's conclusory
3 statement that defendants have a significant history of falsely claiming video footage does not
4 exist. Such speculation does not provide a colorable basis for plaintiff's belief that the alleged
5 video footage exists. Moreover, the fact that video footage was produced at prison disciplinary
6 hearings conducted soon after an incident does not demonstrate that video footage of incidents in
7 April 2021 still existed in October of 2022 when defendants responded to plaintiff's discovery.
8 Plaintiff's reference to one other case where defendants claimed no video was discovered does
9 not constitute a "significant history" of false claims.

10 The court cannot order a party to produce a video that does not exist. No further response
11 is required.

12 **D. Discovery Requests re Inmate Grievances**

13 The following discovery requests seek grievances filed by other inmates. First, the
14 discovery requests and responses and the parties' briefing are set forth, then pertinent grievances
15 are discussed thereafter.

16 **Defendant J. Rowe and S. Medina RPD No. 4**

17 Produce all inmates grievances -- kept within the Inmate Appeal
18 Tracking System -- ("IATS") and third level appeals at Sacramento
19 -- against the defendant by inmates for similar acts claimed in
20 plaintiff lawsuit, specifically unreasonable use of restraints,
excessive force[,] fabrication of 7219 form injury report, leaving
inmates in a cage cuff up behind the back, with no water, no food, no
restroom, fabrication of documents.

21 (ECF No. 30 at 7; ECF No. 45 at 32-33.)

22 **Response**

23 Defendants object to this request as compound. Defendants further
24 object to this request as vague and ambiguous, specifically with
25 respect to the terms "similar acts," "claimed in plaintiff law suit"
26 "cage cuff up," and "fabrication of documents." Defendants further
27 object to this request because it seeks information that is not
28 proportional to the needs of this case, considering the importance of
the issues at stake in the action, the amount in controversy, the
parties' resources, the importance of the discovery in resolving the
issues, and whether the burden or expense of the proposed discovery
outweighs its likely benefit. Defendants further object to this request
on the grounds that it seeks information that is protected from

1 disclosure by the official information privilege, the disclosure of
2 which would create a hazard to the safety and security of the
3 institution, prison officials, and inmates, and violate privacy rights
4 afforded to prison officials and inmates, because it seeks grievances
5 or complaints submitted by inmates who have not consented to the
6 release of their grievances, and that are protected by state and federal
7 privacy laws, including the official-information privilege, California
8 Code of Regulations, title 15, section 3370, and California Penal
9 Code sections 832.7 and 832.8. Defendants further object to this
10 request on the ground that it seeks confidential peace officer
11 personnel information protected by the official information privilege,
12 California Government Code section 6254, and California Evidence
13 Code sections 1040, 1041, and 1043. Subject to and without waiving
14 these objections, Defendants respond to this request as follows: No
15 confidential documents will be produced. A privilege log has been
16 provided and attached hereto.

17 (ECF No. 45 at 28.)

18 Again, plaintiff did not provide a reason that a further response to these two particular
19 requests should be compelled, but generally argues that defendants fail to meet the requirements
20 to invoke the privilege, and the court should order defendants to produce the requested material
21 from defendants' personnel file or review such documents in camera.

22 In opposition,

23 [d]efendants repeat their objections to this request. In particular,
24 Defendants' repeat their objections that this request is vague and
25 ambiguous, specifically with respect to the terms "similar acts,"
26 "claimed in plaintiff law suit." Defendants are unaware of what
27 Plaintiff is requesting with the phrase similar acts, even with
28 Plaintiff's examples.

29 (ECF Nos. 41 at 10, 45 at 28, 33.)

30 Defendant McTaggart RPD No. 4⁵

31 Plaintiff did not write out the specific discovery request, but defendants respond as if

32 ⁵ Plaintiff's motion combines McTaggart's RPD Request Nos. 4 and 5, but for clarity they are
33 addressed separately herein. In addition, plaintiff claims to seek production of McTaggart's RPD
34 No. 6, "provide the MCSP Facility A sign in sheet for the date of April 1, 2021, and April 2,
35 2021, from 6:00 a.m. to 4:00 p.m.," claiming defendant did not provide a response. (ECF No. 30
36 at 13.) However, the RPD No. 6 cited by plaintiff does not match the RPD No. 6 propounded to
37 defendant McTaggart. (ECF No. 45 at 22.) Moreover, defendant's response confirms that
38 responsive documents were provided despite McTaggart's objection. (Id.) No further response to
39 RPD No. 6 is required.

1 plaintiff seeks an order compelling a further response to the following request:

2 Produce complains of misconduct contained in defendants personnel
3 files made against defendant – K. McTaggart that are sufficiently
4 similar to the claims brought in plaintiff[’s] law suit including notices
5 of progressive discipline, adverse personal action, counseling,
6 reprimand, and remedial training – related to inmates complaints
against defendant alleging unreasonable use of restraints – excessive
force, leaving inmates in a case cuff up behind the back with no
water, no food, and no restroom, fabrication of CDCR 7219 form
Injury Report, Fabrication of Documents.

7 (ECF No. 45 at 20.)⁶

8 Response

9 Defendants object to this request as compound. Defendants further
10 object to this request as vague and ambiguous, specifically with
11 respect to the terms “complains,” “progressive discipline,” “adverse
12 personal action,” “counseling,” “reprimand,” “remedial training,”
13 “case,” “cuff up,” and “fabrication of CDCR 7219 form Injury
14 Report.” Defendants further object to this request because it seeks
15 information that is not proportional to the needs of this case,
16 considering the importance of the issues at stake in the action, the
17 amount in controversy, the parties’ resources, the importance of the
18 discovery in resolving the issues, and whether the burden or expense
19 of the proposed discovery outweighs its likely benefit. Defendants
20 further object to this request on the grounds that it seeks information
21 that is protected from disclosure by the official information privilege,
22 the disclosure of which would create a hazard to the safety and
23 security of the institution, prison officials, and inmates, and violate
24 privacy rights afforded to prison officials and inmates, because it
25 seeks grievances or complaints submitted by inmates who have not
26 consented to the release of their grievances, and that are protected by
27 state and federal privacy laws, including the official-information
28 privilege, California Code of Regulations, title 15, section 3370, and
California Penal Code sections 832.7 and 832.8. Defendants further
object to this request on the ground that it seeks confidential peace
officer personnel information protected by the official information
privilege, California Government Code section 6254, and California
Evidence Code sections 1040, 1041, and 1043. Subject to and
without waiving these objections, Defendants respond to this request
as follows: After a diligent search and reasonable inquiry, Defendant
has not discovered any documents in its position that are responsive
to this request for complaints of misconduct against Defendant
McTaggart for “similar acts” claimed in plaintiff lawsuit.

26 ⁶ Although this request seeks complaints of misconduct contained in K. McTaggart’s personnel
27 file, the request is included in this section because the responses include references to grievance
no. 79785. Defendants responded that they found no complaints of misconduct in K.
28 McTaggart’s personnel file. Because defendants cannot be compelled to produce documents that
do not exist, no further response to RPD No. 4 is required.

1 (ECF No. 45 at 20-21.)

2 In his motion, plaintiff cites to a “complaint” filed by a fellow inmate Rodger Alley, T-
3 36335, with the log number “079785,” and claims the grievance alleged that defendants Sgt. K.
4 McTaggart and S. Medina and other staff beat, assaulted, and cuffed Alley up behind his back and
5 left him in a cage for several hours without food, water or restroom, during which Alley pleaded
6 for help from defendant Quiring, who told Alley to “man up, and ignored [Alley’s] pleas.” (ECF
7 No. 30 at 8.) Plaintiff argues that such claims are sufficiently similar to plaintiff’s claims herein,
8 demonstrating that defendants’ responses are “misleading and false.” (Id.) Plaintiff contends that
9 the defendants in this case have significant histories of misconduct toward inmates at MCSP, and
10 the Eastern District has a large volume of lawsuits against MCSP Facility A staff, including some
11 of the defendants herein. (ECF No. 30 at 9.) Plaintiff argues that this demonstrates that
12 defendants cannot be trusted to conduct the review of defendants’ personnel files and therefore
13 the court should review defendants’ personnel files.

14 In opposition,

15 [d]efendants repeat the objections stated in their response.
16 Defendants again repeat that after a diligent search and reasonable
17 inquiry, Defendants have not discovered any documents in its
possession that would be responsive to the request. Accordingly, the
Court should deny this request.

18 In regards to the grievance with the log number 079785, plaintiff is
19 mistaken. Defendant McTaggart was interviewed as a witness and
20 to the alleged misconduct of two other staff members, who are not
21 named Defendants in this matter. Defendant McTaggart was not the
subject of the grievance. Defendant McTaggart’s name does not
22 appear in the grievance at all. Defendants would consent to an in-
camera review by the Court of these grievance documents and the
administrative response.

23 (ECF No. 41 at 15.)

24 In reply, plaintiff contends Alley’s claims in his complaint are sufficiently similar to
25 plaintiff’s claims herein, demonstrating that defendants’ claims that they have not discovered any
26 documents responsive to complaints of misconduct against defendants Quiring and McTaggart
27 are misleading and false. (ECF No. 30 at 8.) Plaintiff claims such records of misconduct are
28 material to support plaintiff’s case before a jury because defendants in this case have a significant

1 history of misconduct toward the inmate population at A-Facility at MCSP. (ECF No. 30 at 9.)

2 Defendant McTaggart RPD No. 5⁷

3 Plaintiff did not write out the specific discovery request, but defendants respond as if
4 plaintiff seeks an order compelling a further response to the following request:

5 Produce all inmates' grievances kept within the inmate appeals
6 tracking system (IATS) and third level appeals at Sacramento against
7 the defendant by inmates for similar acts claimed in plaintiff law suit,
8 specifically unreasonable use of restrain[t]s, excessive force,
fabrication of 7219 form Injury Report, leaving inmates in a cage
cuff up behind the back with no water, no food, no restroom,
fabrication of documents.

9 (ECF No. 45 at 21.)

10 Response

11 Defendants object to this request as compound. Defendants further
12 object to this request as vague and ambiguous, specifically with
13 respect to the terms "similar acts," "claimed in plaintiff lawsuit"
14 "cage cuff up," and "fabrication of documents." Defendants further
15 object to this request because it seeks information that is not
16 proportional to the needs of this case, considering the importance of
17 the issues at stake in the action, the amount in controversy, the
18 parties' resources, the importance of the discovery in resolving the
19 issues, and whether the burden or expense of the proposed discovery
20 outweighs its likely benefit. Defendants further object to this request
21 on the grounds that it seeks information that is protected from
22 disclosure by the official information privilege, the disclosure of
23 which would create a hazard to the safety and security of the
24 institution, prison officials, and inmates, and violate privacy rights
25 afforded to prison officials and inmates, because it seeks grievances
or complaints submitted by inmates who have not consented to the
release of their grievances, and that are protected by state and federal
privacy laws, including the official-information privilege, California
Code of Regulations, title 15, section 3370, and California Penal
Code sections 832.7 and 832.8. Defendants further object to this
request on the ground that it seeks confidential peace officer
personnel information protected by the official information privilege,
California Government Code section 6254, and California Evidence
Code sections 1040, 1041, and 1043. Subject to and without waiving
these objections, Defendants respond to this request as follows:
After a diligent search and reasonable inquire, Defendant has not
discovered any documents in its [possession] that is responsive to
this request for inmates grievances kept within IATS against
Defendant McTaggart for "similar acts" claimed in plaintiff lawsuit.

26 (ECF No. 45 at 21-22.)

27
28 ⁷ Plaintiff's motion combines McTaggart's RPD Request Nos. 4 and 5, but for clarity they are
addressed separately.

1 In his motion, plaintiff cites to a complaint filed by a fellow inmate Rodger Alley with the
2 log number “079785.” Plaintiff believes that this grievance alleges that defendant McTaggart,
3 along with other officers and defendants, beat the complainant, placed him in handcuffs, and left
4 him in a “cage” for several hours without food, water, or a toilet. Plaintiff contends Alley’s
5 claims in his complaint are sufficiently similar to plaintiff’s claims herein, demonstrating that
6 defendants’ claims that they have not discovered any documents responsive to complaints of
7 misconduct against defendants Quiring and McTaggart are misleading and false. (ECF No. 30 at
8 8.) Plaintiff claims such records of misconduct are material to support plaintiff’s case before a
9 jury because defendants in this case have a significant history of misconduct toward the inmate
10 population at A-Facility at MCSP. (ECF No. 30 at 9.)

11 In opposition,

12 [d]efendants repeat the objections stated in their response.
13 Defendants again repeat that after a diligent search and reasonable
14 inquiry, defendants have not discovered any documents in its
15 possession that would be responsive to the request. Accordingly, the
16 Court should deny this request. In regards to the grievance with the
17 log number 079785, plaintiff is mistaken. Defendant McTaggart was
18 interviewed as a witness to the alleged misconduct of two other staff
members, who are not named defendants in the matter. Defendant
McTaggart was not the subject of the grievance. Defendant
McTaggart’s name does not appear in the grievance at all.
Defendants would consent to an in-camera review by the Court of
these grievance documents and the administrative response.

19 (ECF No. 41 at 17.)

20 Defendant McTaggart RPD No. 1

21 Produce grievance # Log, 079785 -- submitted by inmate Roger
22 Alley CDCR #T.36335, specifically on this grievance you were
23 identified as an integral participant in acts that are sufficiently similar
to the claims brought in plaintiff law suit.

24 (ECF No. 45 at 18.)

25 Response

26 Defendants object to this request as compound. Defendants further
27 object to this request as vague and ambiguous, specifically with
28 respect to the terms “integral participant,” “acts,” “sufficiently
similar” and “the claims.” Defendants further object to this request

1 because it seeks information that is not proportional to the needs of
2 this case, considering the importance of the issues at stake in the
3 action, the amount in controversy, the parties' resources, the
4 importance of the discovery in resolving the issues, and whether the
5 burden or expense of the proposed discovery outweighs its likely
6 benefit. Defendants further object to this request on the grounds that
7 it seeks information that is protected from disclosure by the official-
8 information privilege, the disclosure of which would create a hazard
9 to the safety and security of the institution, prison officials, and
10 inmates, and violate privacy rights afforded to prison officials and
11 inmates, because it seeks grievances or complaints submitted by
12 inmates who have not consented to the release of their grievances,
13 and that are protected by state and federal privacy laws, including the
14 official information privilege, California Code of Regulations, title
15, section 3370, and California Penal Code sections 832.7 and
16 832.8. Defendants further object to this request on the ground that it
17 seeks confidential peace officer personnel information protected by
18 the official information privilege, California Government Code
19 section 6254, and California Evidence Code sections 1040, 1041, and
20 1043. Subject to and without waiving these objections, defendants
21 respond to this request as follows: No confidential documents will
22 be produced. A privilege log has been provided and attached hereto.
23

24 (ECF No. 45 at 18-19.)

25 Plaintiff argues that defendant's objections are unjustified because the grievance was
26 submitted by another inmate and made against defendants Quiring, McTaggart, and Medina for
27 similar acts as those claimed in plaintiff's complaint.

28 In opposition,

1 Defendants repeat their objections to this request. Defendants again
2 repeat that Defendant McTaggart is not the subject of the grievances
3 with the log number 79785, nor is any other Defendant in this matter.
4 The grievance in question is made against two officers, neither of
5 which are named Defendants in this matter. Defendant McTaggart
6 was interviewed as a witness to the alleged misconduct of the other
7 officers, but was not herself listed as an accused staff member for the
8 grievance. Although this Request is directed towards Defendant
9 McTaggart, Defendants will also point out that neither Defendant
10 Quiring nor Medina are listed as subjects of this inmate complaint as
11 well. Defendants would consent to an in-camera review by the Court
12 of these grievance documents and the administrative response.
13

14 (ECF No. 41 at 19.)

15 Discussion

16 Grievance No. 79785. Plaintiff objects that defendants failed to produce grievance no.
17 79785; despite defendants' claim that they were not the subject of such grievance, they were
18

1 named in the lawsuit based on such grievance. Alley v. Saelee, Case No. 2:22-cv-00-0661 DB
 2 (E.D. Cal.). However, review of the complaint filed in Alley confirms that none of the
 3 individuals named as defendants herein were named by Alley in grievance no. 79785. Id. (ECF
 4 No. 1 at 3:4).⁸ Indeed, Alley sets forth in detail the allegations he included in grievance no.
 5 79785, which include no reference to any defendant named herein, and Alley expressly states
 6 “[t]he only names that were provided were defendants A. Saelee and R. Denniston.” Id.

7 Alley went on to explain that he subsequently filed another grievance naming additional
 8 prison staff, including McTaggart, Medina, and Quiring, but the Appeals Office refused to
 9 respond. Id.

10 Although some of the defendants named herein were identified by Alley in his complaint,
 11 plaintiff's discovery requests did not ask for complaints in which defendants were named.
 12 Neither Saelee nor Denniston are named as defendants herein. Because the defendants in this
 13 action properly responded to discovery requests concerning grievance no. 79785, and none of the
 14 individuals sued herein were named in grievance no. 79785, no further response is required.

15 Remaining Grievances: Defendants provided a privilege log as to Inmate Grievances No.
 16 100163 (Medina), 130469 (Rowe), 180097 (Rowe), 0201831 (Rowe), 0201901 (Rowe). (ECF
 17 No. 50 at 7-11.) Defendants have met their burden; thus, the court will conduct an in camera
 18 review of such grievances. Davis, 2020 WL 9074713 at *7.

19 E. Supplemental Request for Production of Documents

20 On October 30, 2022, plaintiff submitted additional requests for production of documents.
 21 However, as argued by defendants, such requests were propounded too late. Under the discovery
 22 and scheduling order, “[a]ll requests for discovery pursuant to Federal Rules of Civil Procedure
 23 31, 33, 34 or 36 shall be served not later than sixty days prior to” the discovery deadline of
 24 December 2, 2022, meaning discovery requests must be served by October 4, 2022. (ECF 26 at

25 ⁸ A court may take judicial notice of court records. See, e.g., Bennett v. Medtronic, Inc., 285
 26 F.3d 801, 803 n.2 (9th Cir. 2002) (“[W]e may take notice of proceedings in other courts, both
 27 within and without the federal judicial system, if those proceedings have a direct relation to
 28 matters at issue”) (internal quotation omitted). Further, plaintiff's reply (ECF No. 45 at 6-7)
 demonstrates that he has a copy of the complaint filed in case 2:22-cv-0661 DB (ECF No. 45 at
 37-56), and all filings therein are a matter of public record, equally available to all parties in this
 case.

1 6.) Thus, plaintiff's supplemental discovery requests were untimely. Nevertheless, plaintiff's
2 supplemental requests duplicated his prior discovery requests. To the extent plaintiff again
3 attempted to obtain video evidence or a 7219 form, defendants cannot be compelled to turn over
4 discovery that does not exist.

5 III. Scheduling

6 Discovery as to defendants Quiring, McTaggart, Rowe and Medina is closed.

7 Newly named defendant Chamberlin filed an answer. (ECF No. 49.) The parties may
8 conduct discovery as to defendant Chamberlin until November 13, 2023. All requests for
9 discovery pursuant to Federal Rules of Civil Procedure 31, 33, 34 or 36 shall be served not later
10 than sixty days prior to that date.

11 The pretrial motions deadline will be reset following completion of the in camera review.
12 All parties shall refrain from filing dispositive motions until discovery has closed.

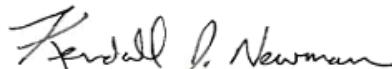
13 Accordingly, IT IS HEREBY ORDERED that:

14 1. Plaintiff's motion to compel (ECF No. 30) is partially granted; within twenty-one days
15 from the date of this order, defendants shall submit for in camera review the following inmate
16 grievances: Nos. 100163, 130469, 180097, 0201831, and 0201901. In all other respects, the
17 motion to compel is denied.

18 2. Discovery as to defendants Quiring, McTaggart, Rowe and Medina is closed.

19 3. The parties may conduct discovery as to defendant Chamberlin until November 13,
20 2023. All requests for discovery pursuant to Federal Rules of Civil Procedure 31, 33, 34 or 36
21 shall be served not later than sixty days prior to that date.

22 Dated: August 10, 2023

23 
24 KENDALL J. NEWMAN
25 UNITED STATES MAGISTRATE JUDGE

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27
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